

Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>12</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has satisfied the five-day pre-filing requirement. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay and designate the proposed rule change to become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because reducing the MPL Order's minimum size from 1000 to 100 will provide greater potential for all Users to be able to use this MPL Order type without delay. Further, the Commission believes that this change to an existing order type does not impose any burden on competition or significantly affect the protection of investors. Therefore, the Commission designates the proposal to become operative upon filing.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-113 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2007-113. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549-1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2007-113 and should be submitted on or before December 14, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56797; File No. SR-NYSEArca-2007-106]

### Self-Regulatory Organizations; NYSEArca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Options Already Listed on Another National Securities Exchange

November 15, 2007.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 9, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 6, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> This order provides notice of the proposal, as amended, and approves the proposal, as amended, on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to revise the options original listing guidelines so that as long as the continued listing standards set forth in NYSE Arca Rule 5.4 are met and the option is listed and traded on another national securities exchange, the Exchange would be able to list and trade the option. The text of the proposed rule change is available at on NYSE Arca's Web site (<http://www.nyse.com>), at NYSE's principal office and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> In Amendment No. 1, the Exchange corrected typographical errors in the rule text and the purpose section where NYSE Arca Rule 5.4 was incorrectly referenced as NYSE Arca Rule 5.6.

the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to revise the options original listing guidelines so that as long as the options maintenance listing standards set forth in NYSE Arca Rule 5.4 are met and the option is listed and traded on another national securities exchange, NYSE Arca would be able to list and trade the option. NYSE Arca Rule 5.3(a)–(c) sets forth the guidelines that an underlying individual equity security must meet before the Exchange may initially list options on that security. These guidelines or requirements are uniform among the options exchanges.

NYSE Arca Rule 5.3(a)(4) relates to the minimum market price at which an underlying security must trade for an option to be listed on it. NYSE Arca Rule 5.3(a)(4) permits the listing of individual equity options on both “covered” and “uncovered” underlying securities.<sup>5</sup> In the case of an underlying security that is a “covered security” as defined under section 18(b)(1)(A) of the Securities Act of 1933 (“1933 Act”), the closing market price of the underlying security must be at least \$3 per share for the five (5) previous consecutive business days prior to the date on which the Exchange submits an option class certification to The Options Clearing Corporation (“OCC”). In connection with underlying securities deemed to be “uncovered,” Exchange rules require that such underlying security be at least \$7.50 for the majority of business days during the three (3) calendar months preceding the date of selection for such listing. In addition, an alternative listing procedure for “uncovered” securities also permits the listing of such options so long as: (1) The underlying security meets the guidelines for continued listing contained in NYSE Arca Rule 5.4;<sup>6</sup> (2) options on such underlying security are traded on at least one other registered national securities exchange; and (3) the average daily trading volume

(“ADTV”) for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts. Paragraphs (1) through (3) of NYSE Arca Rule 5.3(a) further set forth minimum requirements for an underlying security such as shares outstanding, number of holders and trading volume.

The Exchange submits that the alternative listing procedure has limited usefulness. The options exchange (or exchanges) that may be fortunate enough to list an option that at first met the original listing standards but subsequently fails to do so, is provided a trading monopoly inconsistent with the multiple trading of options, fostering competition and the maintenance of a national market system. Under this proposal, an option may be multiply-listed and traded as long as one other options exchange is trading the particular option and such underlying security of the option meets existing continued listing guidelines or requirements.

The Exchange notes that the requirements for listing additional series of an existing listed option (*i.e.*, continued listing guidelines) are less stringent, largely because, in total, the Exchange's guidelines assure that options will be listed and traded on securities of companies that are financially sound and subject to adequate minimum standards.

NYSE Arca believes that although the continued listing requirements are uniform among the options exchanges, the application of both the original and continued listing standards in the current market environment has had an anti-competitive effect.

Specifically, the Exchange notes that on several occasions it has been unable to list and trade options classes that trade elsewhere because the underlying security of such option did not at that time meet original listing standards. However, the other options exchange(s) may continue to trade such options (and list additional series) based on the lower maintenance listing standards, while NYSE Arca may not list any options on such underlying security. The Exchange believes that this is anti-competitive and inconsistent with the aims and goals of a national market system in options.

To address this situation, the Exchange proposes to add new paragraph (6) to NYSE Arca Rule 5.3(a) and amend the alternative original listing requirement set forth in paragraph (4)(b) of NYSE Arca Rule 5.3(a). Specifically, paragraph (6) would be added to provide that notwithstanding that a particular underlying security may not meet the

requirements set forth in Paragraphs 1 through 4 of NYSE Arca Rule 5.3(a), the Exchange nonetheless could list and trade an option on such underlying security if (i) the underlying security meets the guidelines for continued listing in NYSE Arca Rule 5.4 and (ii) options on such underlying security are listed and traded on at least one other registered national securities exchange. Paragraph (4)(b) of NYSE Arca Rule 5.3(a) would be amended to delete the reference to the alternative original listing guideline for “uncovered” securities. In connection with the proposed changes, the Exchange represents that the procedures currently employed to determine whether a particular underlying security meets the initial listing criteria will similarly be applied to the continued listing criteria.

The Exchange believes that this proposal is narrowly tailored to address the circumstances where an options class is currently ineligible for listing on NYSE Arca while at the same time, such option is trading on another options exchange(s). The Exchange notes that when an underlying security meets the maintenance listing guidelines and at least one other exchange lists and trades options on the underlying security, the option is available to the investing public. Therefore, the Exchange does not believe that the current proposal will introduce any inappropriate additional listed options classes. The Exchange submits that the adoption of the proposal is essential for competitive purposes and to promote a free and open market for the benefit of investors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(5)<sup>8</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>5</sup> Section 18(b)(1)(A) of the 1933 Act provides that, “[a] security is a covered security if such security is listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities) \* \* \*” See 15 U.S.C. 77r(b)(1)(A).

<sup>6</sup> The rule text of NYSE Arca Rule 5.3 refers to NYSE Arca Rule 5.6 instead of NYSE Arca Rule 5.4, which contains NYSE Arca's continued listing standards.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-106 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2007-106. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR-NYSEArca-2007-106 and should be submitted on or before December 14, 2007.

### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>10</sup> which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal is narrowly tailored to address the circumstances where an equity option class is currently ineligible for initial listing on the Exchange even though it meets the Exchange's continued listing standards and is trading on another options exchange. Allowing NYSE Arca to list and trade options on such underlying securities should help promote competition among the exchanges that list and trade options. The Commission notes, and the Exchange represents, that the procedures that the Exchange currently employs to determine whether a particular underlying security meets the initial equity option listing criteria for the Exchange will similarly be applied when determining whether an underlying security meets the Exchange's continued listing criteria.

The Commission finds good cause, pursuant to section 19(b)(2)(B) of the Act,<sup>11</sup> for approving the proposed rule change prior to the 30th day after the publication of the notice of the filing thereof in the **Federal Register**. The Commission notes that the proposed rule change is substantially identical to the proposed rule change submitted by American Stock Exchange LLC,<sup>12</sup> which

<sup>9</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>12</sup> See Securities Exchange Act Release No. 56598 (October 2, 2007), 72 FR 57615 (October 10, 2007) (SR-Amex-2007-48). See also Securities Exchange Act Release Nos. 56647 (October 11, 2007), 72 FR 58702 (October 16, 2007) (SR-ISE-2007-80) (substantially identical proposed rule change approved on an accelerated basis); 56717 (October 29, 2007), 72 FR 62508 (November 5, 2007) (SR-

was previously approved by the Commission after an opportunity for notice and comment, and therefore does not raise any new regulatory issues.

### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NYSEArca-2007-106), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56799; File No. SR-Phlx-2007-60]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Structured Equity Products

November 15, 2007.

On August 14, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to update its rules and its fee schedule regarding the listing of equity securities. The proposed rule change was published for comment in the **Federal Register** on October 16, 2007.<sup>3</sup> The Commission received no comments on the proposal.

According to the Exchange, currently, the vast majority of equity securities that trade on Phlx are listed on other exchanges and traded on the Phlx pursuant to unlisted trading privileges. Phlx has a series of rules (the "800 Series") that create standards governing both the issuer of the security and the security to be listed and traded on Phlx. To attract the listing of structured equity

Phlx-2007-73) (substantially identical proposed rule change approved on an accelerated basis); and 56774 (November 8, 2007) (SR-CBOE-2007-114) (substantially identical proposed rule change approved on an accelerated basis).

<sup>13</sup> *Id.*

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 56626 (October 5, 2007), 72 FR 58711 ("Notice").